

### REMARKS

In the present application, claims 1, 2 and 61-104 are pending and stand rejected.

In the response, claims 1, 62, 75, 77, 87, 98, 99 and 104 have been amended.

Reconsideration of claims 1-2 and 61-104 as amended and in view of the remarks that follow is respectfully requested.

Claims 62, 77 and 99 were objected for informalities as set forth in the office action. Claims 62, 77 and 99 have amended in a non-narrowing manner to address the informalities, and have not been amended for reasons related to patentability of these claims.

Claims 1, 72, 75, 87, 98 and 104 were rejected under 35 USC §112, second paragraph. With the exception of claim 72, each of these claims has been amended to address the issues raised in the office action. The amendments do not narrow the claims, and thus the elements recited therein are entitled to their full range of equivalents under the doctrine of equivalents. With regard to claim 72, it does not include the language "engages the fusion device" and therefore the basis of the 112 rejection is not clear. Clarification of the basis for the 112 rejection of claim 72 is respectfully requested or withdrawal of the same.

Claims 1, 2, 66-68, 72 and 73 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,458,638 to Kuslich et al. Kuslich et al. discloses a cap having retaining clips that project from the body of the end cap. The clips snap behind ribs 146 that extend into the interior space of the cage at the end opening of the cage. The ribs are adjacent to and obstruct the same opening in which the cap is positioned.

---

Response to Office Action  
Ser. No. 10/624,981  
Atty Docket No. 4002-3362/PC566.02  
Page 8 of 11

Thus, the clips do not include a length that can engage a thru-hole that is not the end opening. Furthermore, as shown in Fig. 18, the clips extending from the body of the cap are not elongate, but rather are significantly wider than they are long.

In contrast, claim 1 recites "an occlusion body sized and shaped for blocking the opening; and an elongate anchor projecting from said occlusion body, said anchor including a first end attached to said occlusion body and an opposite second end having a lip for engaging the thru-hole, said anchor having a length which reaches from said occlusion body to the thru-hole when the cap is inserted into the opening and said lip is engaged to said thru-hole." The invention recited in claim 1 does not require ribs or other structure at the opening where the occlusion body is positioned. Rather, the anchor is elongate and can be engaged to a thru-hole of the cage, and thru-hole can also be provided, for example, for fusion growth. Furthermore, the end opening of the cage can remain unobstructed for placement of bone growth material prior to engagement of the cap. Accordingly, Kuslich fails to disclose claim 1 and withdrawal of this basis of the rejection is respectfully requested. Claims 2, 66-68, 72 and 73 depend from claim 1 and are allowable at least because claim 1 is allowable.

Claims 1, 2, 73, 75, and 77-81 were rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,159,244 to Suddaby. The '244 patent has a filing date of July 30, 1999. The present application is a divisional of USSN 09/502,731 filed on February 11, 2000; which is a continuation of USSN 08/803,541 filed on February 20, 1997; which is a continuation of USSN 08/799,114 filed on February 11, 1997. Additional applications in this family were filed prior to the '114 patent. Accordingly, the subject matter disclosed and claimed in the present application has a priority date of

---

Response to Office Action  
Ser. No. 10/624,981  
Atty Docket No. 4002-3362/PC566.02  
Page 9 of 11

at least February 11, 1997, based on the '114 application, which is before the filing date of the '244 patent to Suddaby. Therefore, the '244 patent to Suddaby is not prior art under 35 USC §102(e), and withdrawal of this basis of the rejection is respectfully requested.

Claims 61-65, 74, 76, 87-93, and 97 were rejected under 35 USC §103(a) as being unpatentable over Suddaby in view of U.S. Patent No. 5,702,461 to Biedermann et al. or WO 91/06261 to Ray et al. In order for references to be combined to sustain an obviousness rejection, each of the references must be prior art under at least one section of 35 USC §102. As discussed above, Suddaby is not prior art to the present application. Therefore, withdrawal of this basis for rejecting these claims is respectfully requested.

Claims 70, 84 and 98-103 were rejected under 35 USC §103(a) as being unpatentable over Suddaby, Biedermann and Ray as applied to claims 61-65, 74, 76, 87-93 and 97 above, and further in view of U.S. Patent No. 6,605,089 to Michelson. As discussed above, Suddaby is not prior art to the present application. Therefore, withdrawal of this basis for rejecting these claims is respectfully requested.

Claims 71, 85 and 96 were rejected under 35 USC §103(a) as being unpatentable over Suddaby, Biedermann, Ray and Michelson, and further in view of FR 2,710,519 to Robine. As discussed above, Suddaby is not prior art to the present application. Therefore, withdrawal of this basis for rejecting these claims is respectfully requested.

Claims 68, 69, 82 and 83 were rejected under 35 USC §103(a) as being unpatentable over Suddaby in view of US Patent Application Publication No. US 2002/0138144 to Michelson. As discussed above, Suddaby is not prior art to the present

application. Therefore, withdrawal of this basis for rejecting these claims is respectfully requested.

Claims 94 and 95 were rejected under 35 USC §103(a) as being unpatentable over Suddaby, Biedermann, and Ray as applied to claims 61-65, 74, 76, 87-93 and 97, and further in view of US Patent Application Publication No. US 2002/0138144 to Michelson. As discussed above, Suddaby is not prior art to the present application. Therefore, withdrawal of this basis for rejecting these claims is respectfully requested.

Claim 86 was rejected under 35 USC §103(a) alone as being unpatentable over Suddaby alone. As discussed above, Suddaby is not prior art to the present application. Therefore, withdrawal of this basis for rejecting claim 86 is respectfully requested.

Examination of the present application as amended and including claims 1-2 and 61-104 is hereby respectfully solicited. The Examiner is welcome to contact the undersigned to resolve any outstanding issue with regard to the present application.

Respectfully submitted

By: 

Douglas A. Collier  
Reg. No. 43,556  
Krieg DeVault LLP  
One Indiana Square  
Suite 2800  
Indianapolis, Indiana 46204-2079  
(317) 238-6333

---

Response to Office Action  
Ser. No. 10/624,981  
Atty Docket No. 4002-3362/PC566.02  
Page 11 of 11